

House Study Bill 577 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to the requirements for the timely filing of
2 releases or satisfactions of mortgages.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535B.11, subsection 5, Code 2016, is
2 amended by striking the subsection.

3 Sec. 2. Section 655.1, Code 2016, is amended to read as
4 follows:

5 **655.1 Written instrument acknowledging satisfaction.**

6 1. When the amount due on a mortgage is paid off, the
7 mortgagee, the mortgagee's personal representative or assignee,
8 the mortgage servicer, or those legally acting for the
9 mortgagee, and in case of payment of a school fund mortgage,
10 the county auditor, must shall, within thirty days of payment
11 in full, acknowledge satisfaction thereof by execution of
12 an a proper instrument of satisfaction which is in writing,
13 referring refers to the mortgage, and is duly acknowledged
14 and recorded. For purposes of this section, an instrument of
15 satisfaction executed by a person other than the mortgagee,
16 if the mortgagee is an individual, or other than a qualified
17 officer of the mortgagee, if the mortgagee is an entity, is not
18 proper if the authority of the person executing the instrument
19 does not appear of record in relation to the mortgage or the
20 property that is the subject of the mortgage in the county
21 where the mortgage is recorded.

22 2. For purposes of this chapter, "mortgage servicer" means
23 a person, other than the mortgagee, to whom the mortgagee
24 instructs the mortgagor or mortgagor's successor in interest to
25 send payments on a loan secured by the mortgage.

26 Sec. 3. NEW SECTION. **655.2 Written demand for satisfaction.**

27 1. At any time after payment in full of the mortgage, the
28 owner of the property subject to the mortgage, or the owner's
29 legal representative or agent, may personally serve upon the
30 current mortgage holder of record a demand for the mortgage
31 holder to record a proper instrument of satisfaction of the
32 mortgage holder's interest in the mortgage. The demand must
33 include a description of the mortgage to be satisfied and must
34 include any specific requirements necessary for the mortgage to
35 be satisfied.

1 2. In addition to any other manner permitted by law for
2 personal service, the demand may be served as follows:

3 a. By certified mail, return receipt requested, on a natural
4 person who is a resident in the state or on the registered
5 agent in Iowa of a person authorized to transact business in
6 Iowa.

7 b. In the manner provided in section 490.1510, subsection
8 3, on a person who is a nonresident and does not have a current
9 certificate of authority to transact business in Iowa.

10 c. A notice of intent to execute and record a certificate of
11 release sent to the mortgagee or mortgage servicer by the title
12 guaranty division of the Iowa finance authority under section
13 16.92.

14 3. If notice is served under subsection 2, paragraph "a" or
15 "b", the notice is effective at the earliest of the date the
16 mortgage holder receives the certified mail, the date shown on
17 the return receipt, if signed on behalf of the mortgage holder,
18 or five days after its deposit in the United States mail, as
19 evidenced by the postmark, if mailed postpaid and correctly
20 addressed. If notice is served under subsection 2, paragraph
21 "c", notice is effective under any of the circumstances
22 described in section 16.92, subsection 3, paragraph "d".

23 Sec. 4. Section 655.3, Code 2016, is amended to read as
24 follows:

25 **655.3 Penalty for failure to discharge.**

26 1. If a mortgagee, or a mortgagee's personal representative
27 or assignee, or mortgage servicer, upon full performance of
28 the conditions of the mortgage, fails to discharge record the
29 satisfaction of such mortgage within in accordance with section
30 655.1 by the later of ten days after service of a notice is
31 effective under section 655.2 or thirty days after a request
32 for discharge payment in full of the mortgage, the mortgagee is
33 liable to the mortgagor and the mortgagor's heirs or assigns,
34 for a damage award that is an amount equal to the greater of
35 the sum of all actual damages caused by such the failure,

1 including reasonable attorney fees and expert witness fees,
 2 if any, to obtain such discharge, reasonable attorney fees to
 3 collect the amounts due the mortgagor or the mortgagor's heirs,
 4 assigns, or grantees under this section, and court costs or the
 5 minimum damage award, as defined in subsection 2, in effect at
 6 the commencement of an action to collect such damages, plus
 7 court costs. A claim for ~~such damages~~ a damage award may be
 8 asserted in an action for discharge of the mortgage. ~~If the~~
 9 ~~defendant is not a resident of this state, such action may~~
 10 ~~be maintained upon the expiration of thirty days after the~~
 11 ~~conditions of the mortgage have been performed, without such~~
 12 ~~previous request or tender.~~

13 2. a. The minimum damage award for the period beginning
 14 July 1, 2016, and ending June 30, 2021, is seven hundred
 15 dollars.

16 b. For each subsequent five-year period, if the consumer
 17 price index for all urban consumers published by the United
 18 States bureau of labor statistics in June of the most recently
 19 ended five-year period has increased over the consumer price
 20 index for all urban consumers in June of the fifth year of the
 21 five-year period immediately preceding the most recently ended
 22 five-year period, the minimum damage award amount will increase
 23 by the same ratio that the consumer price index increased
 24 over those time periods. If the consumer price index did not
 25 increase over those time periods, the minimum damage award
 26 amount will remain the same as for the most recently ended
 27 five-year period.

28 c. If the United States bureau of labor statistics ceases
 29 to publish the consumer price index for all urban consumers,
 30 the calculation in paragraph "b" shall be based on the increase
 31 in inflation over the most recently ended five-year period,
 32 as measured by a nationally recognized index of changes in
 33 inflation selected by the state treasurer and published in the
 34 Iowa administrative bulletin.

35 EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill relates to the requirements for the timely filing
4 of releases or satisfactions of mortgages and the remedies for
5 the failure to do so.

6 The bill strikes Code section 535B.11, subsection 5.
7 Code section 535B.11, subsection 5, requires a licensee or
8 other mortgagee who services mortgages on residential real
9 estate to execute and deliver a release after payoff and
10 within 45 days after receipt of payment. If the licensee or
11 mortgagee fails to do so within 15 days, the mortgagor may
12 notify the superintendent of the division of banking of the
13 department of commerce. If the licensee or mortgagee fails
14 to make the release and deliver it to the superintendent, the
15 superintendent may assess a penalty not to exceed \$50 for each
16 day of delinquency after the 15 days.

17 Under current Code section 655.1, when the amount due on a
18 mortgage is paid off, the mortgagee or the mortgagee's personal
19 representative must acknowledge satisfaction by execution of
20 an instrument, which is duly recorded. The bill requires
21 that such an instrument of satisfaction must be recorded
22 within 30 days after receipt of payment in full and extends
23 the requirement to a mortgage servicer. The bill defines
24 "mortgage servicer" as a person, other than the mortgagee,
25 to whom the mortgagee instructs the mortgagor or mortgagor's
26 successor in interest to send payments on a loan secured by
27 the mortgage. The bill provides that if the mortgagee is an
28 entity, the authority of the person executing the instrument of
29 satisfaction must appear of record in relation to the mortgage
30 or the property that is the subject of the mortgage in the
31 county where the mortgage is recorded.

32 The bill also provides that after payment of the mortgage
33 in full, the owner of the property may serve the current
34 mortgage holder of record and demand the recording of a proper
35 instrument of satisfaction. If the mortgage holder fails to

1 record the written instrument of satisfaction by the later
2 of 10 days after the mortgagor has served notice of a demand
3 for the recordation of the written instrument of satisfaction
4 or 30 days after payment in full, the mortgagee is liable.
5 Damages are the greater of (a) all actual damages caused by
6 the failure to record the written instrument of satisfaction,
7 including reasonable attorney fees and expert witness fees
8 necessary to obtain the discharge, reasonable attorney fees to
9 collect the damages, and court costs or (b) a minimum damage
10 award plus court costs. The minimum damage award amount from
11 July 1, 2016, to June 30, 2021, is \$700. The bill provides
12 for a calculation of the minimum damage award amount for each
13 five-year period after the initial five-year period based on
14 increases in the consumer price index for all urban consumers
15 over periods of time specified in the bill. If the consumer
16 price index does not increase over those specified periods of
17 time, the minimum damage award amount will remain the same as
18 for the most recently ended five-year period.